

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CHRISTOPHER M.S. DERHAKE,

Plaintiff,

vs.

PATRICK R. DONAHOE,

Defendant.

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) Case No. 12-cv-0917-MJR-SCW
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ORDER

WILLIAMS, Magistrate Judge:

As of today, no entry of default has been made in this case, which Plaintiff Christopher M.S. Derhake brings against Defendant Patrick Donahoe, the Postmaster General. On December 12, pursuant to Federal Rule of Civil Procedure 55(d), Plaintiff moved for default judgment (or, it would seem, for a hearing to establish evidence to meet the high burden of procuring default judgment against the United States, its officers, or its agencies). ***See Fed. R. Civ. P. 55(d) (such default judgments may be entered "only if the claimant establishes a claim or right to relief by evidence that satisfies the court.")***.

When, as here, default has not been entered, courts sometimes deny a motion for default as premature. ***See Ali v. St. Catherine Hosp.***, No. 08-CV-326-TS, 2009 WL 348900, at *1 (N.D. Ind. Feb. 10, 2009) (citing ***Lowe v. McGraw-Hill Cos., Inc.***, 361 F.3d 335, 339 (7th Cir. 2004) for the proposition that a party must move for default, then for default judgment). Sometimes, though, courts treat such motions as requests for both an entry of default and an entry of default judgment. ***See Wolf Lake Terminals, Inc. v. Mutual Marine Ins. Co.***, 433 F. Supp.2d 933, 941 (N.D. Ind. 2005). In either case, default judgment must be preceded by default, which is not appropriate here because Defendant---on December 13---filed a motion for change of

venue pursuant to Federal Rule 12(b)(3), thus signalling a desire to defend and a willingness to cooperate in the court's proceedings. *See McCready v. Harrison*, 67 F. App'x 971, 974 (7th Cir. 2003). Because default is not appropriate here, neither is default judgment, and Plaintiff's motion (Doc. 9) is **DENIED**.

Defendant's motion to change venue will be taken up by the District Court according to the briefing schedule set yesterday.

IT IS SO ORDERED.

DATE: 12/14/2012

/s/ Stephen C. Williams
STEPHEN C. WILLIAMS
United States Magistrate Judge